

Remarks:

Applicants have read and considered the Office Action dated September 12, 2011 and the references cited therein. Claims 1 and 10 have been amended. Claims 1-4, 6-11 and 13-14 are currently pending. Reconsideration is hereby requested.

Claims 1-4, 10-11 and 13-14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tseng in view of Pollet et al. Applicants note that claims 1 and 10 have now been amended and are believed to more clearly patentably distinguish over the prior art including the combination of Pollet and Tseng. Claims 1 and 10 now recite that the nozzle element comprises at least a first part and a second part, the first part of the nozzle element comprising a more resilient material than said second part of the nozzle element and including a nozzle outlet comprising a nozzle edge that forms means for achieving a reproducible droplet spectrum of the aerosol. Applicants assert that the prior art does not teach or suggest such a nozzle element for an inhalation therapy device. Even if the cited references are combined, such a nozzle element would not be obvious to one of ordinary skill in the art. Pollet et al. teach arranging a nozzle orifice in the rigid core rather than in a thermoplast portion. If the rigid core as taught by Pollet et al. is deformed during maintenance or cleaning, the nozzle orifice has no resilience and cannot return to the original shape due to the rigidity of the materials of the rigid core. The opening in the thermoplast section as shown in Figure 9 of Pollet et al., does not contribute to defining the droplet spectrum in any way. Pollet et al. teach away from forming a nozzle element having a portion with a more resilient material that includes a nozzle edge that creates a desired spray pattern.

Pollet states (58) that "Whilst leaving the internal surface (74) of the outlet orifice (71) free of thermoplastic elastomer. In this way, the spray pattern, which depends on the orifice geometry is not adversely affected." As Pollet teaches away from the construction recited in claim 1 and intentionally uses materials having rigid properties that teach away from the present

invention, Applicants assert that the combination with Tseng and Pollet neither teach nor suggest the inhalation therapy device recited in claims 1 and 10.

Claim 1 further clarifies that the nozzle edge forms means for achieving a reproducible droplet spectrum of the aerosol. As stated above, Pollet uses a rigid material that cannot be deformed and return to the original shape while still achieving a reproducible droplet spectrum for the aerosol. Applicants assert that the therapy device recited in claims 1 and 10 is neither shown nor suggested by the prior art or any combination thereof. Pollet teaches away from combination with Tseng as the structure in question is not located to be formed of the material recited. Applicants assert that even when combined, the prior art fails to achieve the inhalation therapy device recited in claims 1 and 10. Applicants therefore request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Claims 6-8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tseng and Pollet et al., in view of Dobbeling et al. Applicants respectfully traverse the rejection. As discussed above, Applicants assert that claims 1 and 10 patentably distinguish over the combination of Tseng and Pollet. Dobbeling fails to remedy the shortcomings of that combination. Therefore, Applicants assert that claims 1 and 10 also patentably distinguish over the combination of Pollet, Tseng and Dobbeling. As claim 1 patentably distinguishes over the combination, Applicants assert that claims 6-8 also patentably distinguish over the combination for at least the same reasons. Applicants therefore request that the rejection of claims 6-8 under 35 U.S.C. § 103(a) be withdrawn.

Claim 9 was indicated as being allowable. Applicants thank the Examiner for the indication of allowable subject matter. However, as discussed above, Applicants assert that claim 1 patentably distinguishes over the combination. Therefore, Applicants have elected not to rewrite claim 9 in independent form at this time.

A speedy and favorable action in the form of a Notice of Allowance is hereby solicited. If the Examiner feels that a telephone interview may be helpful in this matter, please contact Applicants' representative at (612) 336-4728.

Please consider this a PETITION FOR EXTENSION OF TIME for a sufficient number of months to enter these papers or any future reply, if appropriate. Please charge any additional fees or credit overpayment to Deposit Account No. 13-2725.




Respectfully submitted,

MERCHANT & GOULD P.C.

Dated: _____

12/12/11

By: _____


Gregory A. Sebald
Reg. No. 33,280
GAS/krm